

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

TERESA MILLER,

Petitioner,

v.

**CIVIL ACTION NO. 2:16-CV-7
(BAILEY)**

STATE OF WEST VIRGINIA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Robert W. Trumble [Doc. 67]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed report and recommendation ("R&R"). Magistrate Judge Trumble filed his R&R on June 21, 2016, wherein he recommends this Court dismiss without prejudice the petitioner's § 2254 and dismiss as moot the remainder of the petitioner's pending motions.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889

F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Trumble's R&R were due within fourteen (14) days of service, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). The docket reflects that service was accepted on June 22, 2016. [Doc. 68]. To date, no objections have been filed. This Court notes that on June 27, 2016, a submission from the petitioner labeled "Factual Basis Background" and dated June 22, 2016, was docketed. [Doc. 69]. However, review of the document indicates that it recites some of the procedural background from this matter and restates many of the petitioner's arguments without addressing the magistrate judge's recommendation that her § 2254 petition be dismissed without prejudice because she has not yet properly exhausted her remedies in state court. Thus, this Court finds that the document was not intended as nor will be construed as an objection to Magistrate Judge Trumble's R&R. Accordingly, as an objection to the R&R has not been filed and the time in which to do so has passed, this Court will review the R&R for clear error.

Upon careful review of the above, it is the opinion of this Court that the Report and Recommendation [Doc. 67] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that the petitioner's § 2254 petition [Doc. 1] be **DISMISSED WITHOUT PREJUDICE** to the petitioner's right to renew the same following the proper exhaustion of state remedies. Additionally, this Court **ORDERS** that the remainder of the petitioner's pending motions [Docs. 27, 28, 31, 32, 33, 34, 38, 39, 42, 43, 45, 46, 47, 48, 51, 52, 53, 54, 55, 56, 57, 58, 59, 65] be **DISMISSED AS MOOT**. This Court further **DIRECTS** the

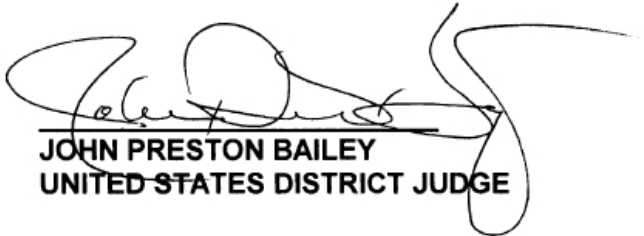
Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** a certificate of appealability, finding that the petitioner has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record herein and to mail a copy to the *pro se* petitioner.

DATED: July 12, 2016.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE